

CHAPTER 69B**HEARINGS****Authority**

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R.2011 d.305, effective December 19, 2011.
See: 43 N.J.R. 2461(a), 43 N.J.R. 3410(a).

Chapter Expiration Date

Chapter 69B, Hearings, expires on December 19, 2018.

Chapter Historical Note

Chapter 69B, Hearings, was adopted as new rules by R.2011 d.305, effective December 19, 2011. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**13:69B-1.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Exclusion list” is defined at N.J.A.C. 13:69G-1.1.

“Final Action” means a decision or order issued by the Director or hearing examiner which may be appealed to the Commission pursuant to N.J.S.A. 5:12-63(1)b.

“Hearing examiner” is the “judge” as defined by the UAPR and shall include the Director, the designee of the Director, or any other qualified person, including an employee of the Division, designated to hear facts and issues relating to a particular matter.

“OAL” means the Office of Administrative Law.

“Party” means any person or entity directly involved in a contested case, including petitioner, respondent, intervenor, or State agency proceeding in any such capacity.

“Report” means a written report from the Division of Gaming Enforcement setting forth its position on an initial or resubmission license application.

“UAPR” means the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.2013 d.020, effective February 19, 2013.

See: 44 N.J.R. 2041(a), 45 N.J.R. 335(b).

Added definitions “Final Action”, “Hearing examiner” and “Report”; and deleted definition “Letter report”.

13:69B-1.2 Applicability of rules

(a) This chapter shall govern the procedural aspects pertaining to the conduct of all contested cases including:

1. Initial and retention applications for casino service industry licenses;

2. Complaints against casino service industry licensees, casino employee registrants and labor organization registrants seeking revocation of such license or registration;

3. Complaints against licensees and registrants for violations of the Casino Control Act;

4. Complaints seeking forfeiture of cash winnings or anything of value obtained in a gaming transaction by a person prohibited by law from engaging in such transaction; and

5. Petitions to place a candidate on the exclusion list.

(b) Contested cases shall be governed by the UAPR, in addition to the provisions of the Casino Control Act and the rules in this chapter.

(c) To the extent that the Act and the rules in this chapter are inconsistent with the UAPR, the former shall apply.

13:69B-1.3 Right to a hearing

(a) The Division shall not deny, refuse to allow retention of or revoke any license or registration or place a candidate on the exclusion list unless it has first afforded the licensee, registrant or candidate for exclusion an opportunity for a settlement conference, followed by a hearing upon failure to reach a settlement with the Division, in accordance with law and the rules of the Division.

(b) When the Division has authority under the Act or the rules of the Division to suspend a license or registration without first holding a hearing, it shall promptly upon exercising such authority afford the licensee or registrant an opportunity for:

1. A settlement conference with the Division; and
2. Upon failure to reach a settlement with the Division, a hearing in accordance with law and the rules of the Division.

(c) This section shall not apply where:

1. The Act provides that the Division is not required to grant a hearing in regard to the refusal to allow retention of a license or registration; or
2. The Division is required by law to refuse to allow retention of a license or registration without exercising any discretion in the matter on the basis of a judgment of a court of competent jurisdiction.

SUBCHAPTER 2. CONDUCT OF CONTESTED CASES

13:69B-2.1 Commencement of a contested case

(a) A contested case shall be commenced at the direction of the Division or by the filing of one of the following by the Division:

1. A report recommending that an application for initial or resubmission licensure, registration or qualification should not be granted or continued;

2. A written complaint or statement of charge, which sets forth in ordinary and concise language the charges against a licensee, registrant or applicant and the acts or omissions supporting such charges;

3. A written petition to place a candidate on the exclusion list, which sets forth in ordinary and concise language the grounds for exclusion; or

4. A written complaint seeking forfeiture of winnings or things of value obtained in a gaming transaction by a prohibited person as defined in N.J.A.C. 13:69G-3.1.

(b) A filed report recommending that an application be granted, or taking no position on an application, will not commence a contested case unless otherwise directed by the Division.

Amended by R.2013 d.020, effective February 19, 2013.

See: 44 N.J.R. 2041(a), 45 N.J.R. 335(b).

In (a)1 and (b), deleted "letter" preceding "report".

13:69B-2.2 Notice of right to hearing

(a) The Division shall serve upon the applicant or respondent a copy of the pleading and a written notice of the right to a hearing and the responsibility to request a hearing, as follows:

1. Complaints shall be served upon a licensee, applicant or registrant either personally or by certified mail;
2. Reports regarding a contested application shall be served upon an applicant by ordinary mail;
3. Petitions for exclusion shall be served on the candidate for exclusion personally, by certified mail at the last known address of the candidate for exclusion or by publication daily for one week in a newspaper of general circulation in Atlantic City, New Jersey; and
4. A forfeiture complaint shall be served upon the prohibited person, as defined in N.J.A.C. 13:69G-3.1, either personally or by regular mail at the mailing address provided by the prohibited person pursuant to N.J.A.C. 13:69G-3.2(b).

Amended by R.2013 d.020, effective February 19, 2013.

See: 44 N.J.R. 2041(a), 45 N.J.R. 335(b).

In (a)2, substituted "Reports" for "Letter reports".

13:69B-2.3 Request for a hearing

(a) Any request for a hearing before the Division shall be filed with the Division, with one copy to each other party, within 30 days of receipt of notice of a petition for exclusion, or within 15 days of receipt of notice of a contested application or complaint. Such request shall include a notice of defense which sets forth:

1. Admission or denial of the allegations in whole or in part;
2. Affirmative defenses, new matters or explanations by way of defense;

3. All information regarding rehabilitation, where applicable; or

4. Any legal objection to the allegations contained in the petition, contested application or complaint.

(b) A party's request for hearing shall be filed with the Division's Contested Case Intake Unit at:

1300 Atlantic Avenue
4th Floor
Atlantic City, NJ 08401

Amended by R.2013 d.020, effective February 19, 2013.

See: 44 N.J.R. 2041(a), 45 N.J.R. 335(b).

In the introductory paragraph of (a), inserted "before the Division".

13:69B-2.4 Failure to request a hearing; withdrawal of a request; final action

(a) If a party fails to timely file a request for a hearing pursuant to N.J.A.C. 13:69B-2.3, or withdraws a request for a hearing, the Division may:

1. Order a hearing on its own motion; or

2. Determine that such action constitutes a waiver of the right to a hearing and admission of all material allegations of fact in the complaint or petition for exclusion or failure to affirmatively demonstrate qualification or absence of disqualification for licensure or registration. The Division may take final action including, without limitation:

- i. Denial of any pending initial or resubmission application;
- ii. Revocation of a license or registration;
- iii. Prohibition of direct or indirect business with casino licensees or applicants;
- iv. Imposition of a monetary penalty;
- v. Placement on the exclusion list;
- vi. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 13:69G-3.2; or
- vii. Other relief that is consistent with the policies of the Act and in the public interest.

13:69B-2.5 Scheduling of settlement conference; purpose of settlement conference; multiple settlement conferences

(a) Upon a party's request for a hearing, the Division shall schedule a settlement conference at the Division's offices.

(b) The purposes of the settlement conference are to:

1. Afford the Division and the applicant or respondent an opportunity to amicably resolve all outstanding issues raised in the Division's letter report, revocation or violation complaint or exclusion or forfeiture petition;

2. Identify all unresolved issues to be addressed at a hearing; and

3. Resolve any discovery issues in advance of the hearing.

(c) In the interests of the efficient administration of a contested case, the Division may schedule additional conferences to achieve either of the purposes in (b) above, but absent extraordinary circumstances, no more than three conferences shall be scheduled.

(d) All requests to reschedule a settlement conference shall be directed to the Division's Contested Case Intake Unit.

(e) If an applicant fails to appear for a settlement conference and fails to show good cause within five days of the scheduled date of the settlement conference for his or her failure to appear, the applicant's request for hearing may be deemed withdrawn and the Division may take final action, including, without limitation:

1. Denial of any pending initial or resubmission application;
2. Revocation of a license or registration;
3. Prohibition of direct or indirect business with casino licensees or applicants;
4. Imposition of a monetary penalty;
5. Placement on the exclusion list;
6. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 13:69G-3.2; or
7. Other relief that is consistent with the policies of the Act and in the public interest.

13:69B-2.6 Transmission to the OAL or designation of a hearing examiner

(a) Upon the failure of the parties to enter into a stipulation of settlement, the matter shall be a contested case and be transmitted to the Director for further proceedings.

(b) Unless the Director hears a contested case directly, the Director may refer the matter to the OAL or designate a staff member of the Division or other qualified person other than an employee of the Division to serve as hearing examiner.

(c) A hearing examiner appointed by the Director shall be an Assistant Attorney General or a Deputy Attorney General who is not assigned to the bureau of the Division from which the contested case arises and who shall have had no prior involvement with the contested case.

(d) If a hearing examiner becomes unavailable at anytime after the commencement of a hearing but prior to the filing of the initial decision, the Director may in his or her discretion hear the matter directly, appoint another hearing examiner or transfer the contested case to the OAL. The Director or the

new hearing examiner may either continue the hearing and render a decision upon the entire record or begin the hearing anew.

13:69B-2.7 Contested case hearings

(a) The Director or hearing examiner appointed by the Director shall identify all legal issues unresolved through the settlement conference.

(b) All requests to reschedule a contested case hearing in a case scheduled before the Director or a hearing examiner shall be directed to the Division's Contested Case Intake Unit.

(c) If an applicant fails to appear for a contested case, the applicant's request for hearing may be deemed withdrawn and the Division may take final action, including, without limitation:

1. Denial of any pending initial or resubmission application;
2. Revocation of a license or registration;
3. Prohibition of direct or indirect business with casino licensees or applicants;
4. Imposition of a monetary penalty;
5. Placement on the exclusion list;
6. Order forfeiture of any winnings or things of value obtained by a prohibited person and seized pursuant to N.J.A.C. 13:69G-3.2; or
7. Other relief that is consistent with the policies of the Act and in the public interest.

(d) The Director or a hearing examiner appointed by the Director or an administrative law judge shall have the power and authority to order any person to answer a question or questions or produce evidence of any kind and confer immunity as provided in N.J.S.A. 5:12-107g, in any contested case hearing.

(e) If the applicant or respondent chooses not to testify on his or her own behalf, the Division shall have the right to call the applicant or respondent to testify, and he or she may be questioned as if under cross-examination.

(f) The parties shall complete discovery and supply all discovery materials to be used at the hearing no later than 14 calendar days before the first scheduled date for a hearing. If a party fails to supply complete discovery 14 calendar days before the first scheduled hearing date, the Director or hearing examiner may bar the use at the hearing of any material not provided in a timely manner, including, without limitation:

1. Expert or other testimony;
2. Any documentation; or
3. Any other evidence of any kind.

Amended by R.2013 d.020, effective February 19, 2013.
See: 44 N.J.R. 2041(a), 45 N.J.R. 335(b).
Added (f).

13:69B-2.8 Burden of proof

(a) The Division shall have the affirmative obligation to establish by a preponderance of the evidence violations of the Act or disqualification pursuant to N.J.S.A. 5:12-86.

(b) The Division shall have the affirmative obligation to establish by a preponderance of the evidence that a candidate for exclusion satisfies the criteria for exclusion set forth in N.J.S.A. 5:12-71 and N.J.A.C. 13:69G-1.3. In a hearing pursuant to N.J.A.C. 13:69G-1.8, the excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.

(c) Matters pertaining to candidates for preliminary exclusion shall be handled in accordance with N.J.S.A. 5:12-71, N.J.A.C. 13:69G-1.5A and N.J.A.C. 13:69B-4.1 and 4.2.

(d) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence affirmative qualification for licensure.

(e) An applicant or respondent shall have the affirmative obligation to establish by clear and convincing evidence rehabilitation in accordance with N.J.S.A. 5:12-91d.

(f) The Division, in a hearing seeking forfeiture, shall have the affirmative obligation to establish by a preponderance of the evidence that the respondent is a prohibited person as defined in N.J.A.C. 13:69G-3.1 and was engaged in a gaming transaction. Any winnings or other things of value resulting from a gaming transaction that are not claimed within six months of the date of the transaction shall be presumed to have been won by a prohibited person who has waived his or her right to a hearing. There shall be a rebuttable presumption that the winnings or things of value seized from the respondent were obtained from engaging in a gaming transaction and therefore subject to forfeiture. In order for the respondent to rebut this presumption the respondent shall have the affirmative obligation to prove by a preponderance of the evidence that the winnings or things of value, or any portion thereof, were not obtained from engaging in a gaming transaction.

13:69B-2.9 (Reserved)

13:69B-2.10 Decision of Director

(a) Within 45 days from the close of the record, the Director shall issue a written decision to the parties resolving all aspects of a contested case. Any extension of this time period shall be granted by the Director for good cause and shall be limited to an additional period of 45 days; however, additional numbers of extensions may be granted. The parties shall be notified of any extension.